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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,292	08/10/2001	David K. Lee	F- 259	7963

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EXAMINER

COSIMANO, EDWARD R

ART UNIT PAPER NUMBER

3629

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/928,292

**Applicant(s)**

LEE ET AL.

**Examiner**

Edward R. Cosimano

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) none is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/9/01;0/11/01.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

1. Applicant should note the changes to patent practice and procedure:
  - A) effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997;
  - B) effective November 07, 2000 as published in the Federal Register, Vol 65, No. 54603, September 08, 2000; and
  - C) Amendment in revised format, Vol. 1267 of the Official Gazette published February 25, 2003.
2. Applicant's claim for the benefit of an earlier filing data under 35 U.S.C. § 120 is acknowledged.
3. The disclosure is objected to because of the following informalities:
  - A) applicant must update:
    - (1) the continuing data in paragraph number 1 on page 1, and with the current status of each of the referenced applications, e.g., --now abandoned--, or --now patent #?--, or --which is abandoned and now serial number #?--, --which is expired--, etc.
  - B) The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01. Note paragraph number 19 of page 7.Appropriate correction is required.
4. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.52, 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(h)-1.121(i).
5. Claims 1-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5.1 In regard to claims 1-21, although one of ordinary skill at the time of the invention would know how to accomplish each of the individual recited actions/functions from the language of these claims, since, there is no clear and definite interconnection between one or more of the recited limitations of these claims, one of ordinary skill could not determine from the language of these claims whether or not they are in fact making and/or using the claimed invention. In this regard it is noted that from the language of these claims it is vague, indefinite and unclear:

A) regard to claims 1, 11 & 17, and how the carrier may use the "electronic address" to communicate location information to the company's server, since the invention as recited in this claim fails to recite that the carrier would perform any function related to tracking the item of mail or storing the location of the item of mail.

B) regard to claims 1, 11 & 12 and how the "office work" may access the stored tracking information since the invention as recited in this claim fails to recite that the office work would have any knowledge of the unique identification that was applied by the mail room to the item of mail so that the office worker could identify the correct tracking data.

5.2 Claims not specifically mentioned above, inherit the defects of the base claim through dependency. For the above reason(s), applicant has failed to particularly point out what is regarded as the invention.

6. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

6.1 Claims 1-21 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter.

6.1.1 As set forth by the Court in:

A) In re Musgrave 167 USPQ 280 at 289-290 (CCPA 1970), "We cannot agree with the Board that these claims (all the steps of which can be carried out by the disclosed apparatus) are directed to non-statutory processes

merely because some or all of the steps therein can also be carried out in or with the aid of the human mind or because it may be necessary for one performing the process to think. All that is necessary, in our view, to make a sequence of operational steps a statutory "process" within 35 U.S.C. 101 is that it be in the technological arts so as to be in consonance with the Constitutional purpose to promote the progress of "useful arts." Cons. Art. 1, sec. 8.", {emphasis added}; and

B) In re Sarkar 100 USPQ 132 @ 136-137 (CCPA 1978), echoing the Board of Appeals stated in regard to claim 14 "14. A method of locating an obstruction in an open channel to affect flow in a predetermined manner comprising:

a) obtaining the dimensions of said obstruction which affect the parameters of flow;

b) constructing a mathematical model of at least that portion of the open channel in which said obstruction is to be located in accordance with the method of claim 1 using those dimensions obtained in step (a) above;

c) adjusting the location of said obstruction within said mathematical model until the desired effect upon flow is obtained in said model; and thereafter

d) constructing said obstruction within the actual open channel at the specified adjusted location indicated by the mathematical model.";

and "Concerning claims 14-39 and the significance of "post-solution activity," like building a bridge or dam, the board concluded: While it is true that the final step in each of these claims makes reference to the mathematical result achieved by performing the prior recited steps, we consider the connection to be so tenuous that the several steps recited in each claim when considered as a whole do not constitute a proper method under the statute.", {emphasis added}.

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6.1.2 Further, it is noted in regard to claims 14-39 of Sarkar, although step (d) of claim 14 of Sarkar references the result of step (c) of claim 14 of Sarkar it is clear from the language of step (c) of claim 14 of Sarkar that multiple adjustments to the location of the obstruction are required to be made until a location with the desired effect has been determined. Hence, the reference to constructing the obstruction at the “specified adjusted location” in step (d) of claim 14 of Sarkar is vague, indefinite and unclear in regard to which one of the possible multiple adjusted locations of the obstruction that were used during step (c) of claim 14 of Sarkar would be used when constructing the obstruction as required by step (d) of Sarkar. Therefore, without a clear connection between step (d) of Sarkar and the remaining steps of claim 14 of Sarkar, the Board of Appeals and the Court held that these claims were not a process with in the meaning of process as used in 35 U.S.C. § 101 and hence were directed to non statutory subject matter.

6.1.3 As can be seen from claims 1-21, these claims are directed to a series of devices for performing various functions or steps/actions/functions, which as set forth above in regard to the rejection of claims 1-21 under 35 U.S.C. § 112 2<sup>nd</sup> paragraph, are not clearly and definitely interconnected to one another and therefore do not provide an operative useful machine/system or method/process with in the meaning of machine or process as used in 35 U.S.C. § 101.

6.2 Claims 1-21 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter, since:

A) in regard to claims 1-21, these claims fail to comply with the “requirements this title, namely 35 U.S.C. § 112 2<sup>nd</sup> paragraph as set forth above.

7. The examiner has cited prior art of interest, for example:

A) Baghai et al (5,905,868) which collects monitoring data from across a network and permits users to access the collected data.

8. The shorten statutory period of response is set to expire 3 (three) months from the mailing date of this Office action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703)-308-2702. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

9.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.

9.2 The fax phone number for OFFICIAL FAXES is (703) 872-9306.

9.3 The fax phone number for AFTER FINAL FAXES is (703) 872-9306.

02/07/05

A handwritten signature in black ink, appearing to read "Edward R. Cosimano". The signature is fluid and cursive, with the first name "Edward" and last name "Cosimano" clearly distinguishable.

Edward R. Cosimano

Primary Examiner A.U. 3629

US-PAT-NO: 5905868

DOCUMENT-IDENTIFIER: US 5905868 A

TITLE: Client/server distribution of performance monitoring data

DATE-ISSUED: May 18, 1999

INVENTOR-INFORMATION:

NAME	CITY	STATE	ZIP CODE
Baghai; Ali	San Diego	CA	N/A
Gharakhanian; Karmen	Costa Mesa	CA	N/A
Ishimoto; Guy Ken	San Diego	CA	N/A
Kam; Larry Wai H.	West Hollywood	CA	N/A
MacDonald; Robert Jerald	San Diego	CA	N/A
Thomas; William Paul	Vista	CA	N/A
Iyengar; Ashok Kumar	Oceanside	CA	N/A

US-CL-CURRENT: 709/224, 709/201 , 709/203

**ABSTRACT:** A performance monitoring system uses a client/server architecture across a network including a plurality of interconnected computers. A data collector process collects and stores data from a monitored process, wherein the data collector process allows a user to control a frequency of collection for each of one or more different types of the collected data and gathers the different types of the collected data in parallel from the monitored process. A server process distributes the data collected by the data collector process to one or more client processes. Each client process manages a connection with the server process on behalf of one or more performance monitoring applications and relays data requests to the server process and delivers results therefrom to the performance monitoring applications.

23 Claims, 9 Drawing figures

Exemplary Claim Number: 1

Number of Drawing Sheets: 9

----- KWIC -----

**Abstract Text - ABTX (1):** A performance monitoring system uses a client/server architecture across a network including a plurality of interconnected computers. A data collector process collects and stores data from a monitored process, wherein the data collector process allows a user to control a frequency of collection for each of one or more different types of the collected data and gathers the different types of the collected data in parallel from the monitored process. A server process distributes the data collected by the data collector process to one or more client processes. Each client process manages a connection with the server process on behalf of one or more performance monitoring applications and relays data requests to the server process and delivers results therefrom to the performance monitoring applications.

**Brief Summary Text - BSTX (8):** To overcome the limitations in the prior art described above, and to overcome other limitations that will become apparent upon reading and understanding the present specification, the present invention discloses a performance monitoring system using a client/server architecture across a network including a



plurality of interconnected computers. A data collector process collects and stores data from a monitored process, wherein the data collector process allows a user to control a frequency of collection for each of one or more different types of the collected data and gathers the different types of the collected data in parallel from the monitored process. A server process distributes the data collected by the data collector process to one or more client processes. Each client process manages a connection with the server process on behalf of one or more performance monitoring applications and relays data requests to the server process and delivers results therefrom to the performance monitoring applications.

Detailed Description Text - DETX (56): Selecting a Collection Activity command from a menu of the Data Collector 20 opens a dialog box similar to the dialog box illustrated in FIG. 2. The user can use this dialog box to find out the current collection activity against the associated DBS 18. Clicking the check box labeled "Show this list on next startup" turns on or off the automatic display of this dialog box when the Data Collector 20 starts. If the check mark appears, the dialog box is displayed automatically and collection only begins after the user confirms startup. If the check mark is missing, the Data Collector 20 starts up without displaying the dialog and waiting for confirmation from the user. Clicking the Close button will close the dialog.

Detailed Description Text - DETX (89): This concludes the description of the preferred embodiment of the invention. In summary, a performance monitoring system has been described that uses a client/server architecture across a network including a plurality of interconnected computers. A data collector process collects and stores data from a monitored process, wherein the data collector process allows a user to control a frequency of collection for each of one or more different types of the collected data and gathers the different types of the collected data in parallel from the monitored process. A server process distributes the data collected by the data collector process to one or more client processes. Each client process manages a connection with the server process on behalf of one or more performance monitoring applications and relays data requests to the server process and delivers results therefrom to the performance monitoring applications.